

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1323 of 2011

JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

The sole accused in SC ST SC.No.7 of 2010 on the file of the Special Judge for Trial of Cases under SC/ST (POA) Act – cum – VI Additional District and Sessions Judge, Kurnool, is the appellant herein. He was tried for the offences punishable under Section 307 IPC, for attempting to cause the death of one Dayadi Nageswara Rao (PW7), while the second charge was under Section 324 IPC for causing injuries to PW1. The third charge was for an offence under Section 3(2)(v) of SC/ST (POA) Act (for short, 'the Act') for attempting to cause the death of PW7, on the ground that the said person belongs to Scheduled Caste. Vide judgment dated 04.11.2011, learned Sessions Judge convicted the accused for the offence punishable under Section 3(2)(v) of SC/ST (POA) Act and sentenced him to suffer imprisonment for life and also to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 324 IPC.

2. The substance of the charge against the accused is that on 25.05.2007, while PWs.1, 4 and 7 were sleeping on the terrace at the house at Munagala village, the accused went to the terrace of the house on 26.05.2007 at about 05.00 a.m. and attacked PW7

with a sickle on his neck, apart from abusing PWs.2 and 4, by touching their caste.

(i) PWs.1 to 7 belongs to mala caste and all of them are close relatives to each other. PWs.1, 4 and 7 are brothers. PW2, who is an auto driver, is related to PW1. PW3 is the resident of the same locality, while PW4 is the brother of PWs.1 and 7. PW5 is the grandmother of PWs.1, 4 and 7. PW6 is also relative of PWs.1,4 and 7.

(ii) As stated earlier, on 25.05.2007, PW1 along with others slept on the terrace of their house in the night. On the next day morning at about 05.00 a.m., on hearing the cries of PW7, PW1 woke up and found the accused hacking his brother with hunting sickle. When PW1 intervened, the accused is said to have attacked him on his right side shoulder. When PW1 tried to escape, the accused beat him over his right hand below the shoulder with sickle. On hearing cries, the younger brother of PW1 and his uncle woke up. On seeing them, the accused is said to have abused them by touching their caste as "*Mala Lanja Kodukullara Maa Mundu Meeru Manchala Meeda Kurchuntara*" and left the place by jumping from the terrace. Thereafter, all the injured were taken to Nandyal Government Hospital in the auto of PW2 and from there they were shifted to Kurnool Government General hospital. On 26.05.2007, PW10 the SHO of Nandyal Taluk Police Station, received an intimation from Government hospital, Nandyal, about the admission of PWs.1 and 7 into

hospital and also about referring them to Government hospital, Kurnool. Ex.P4 is the hospital intimation. On receipt of the same, he proceeded to Kurnool General hospital at about 02.00 p.m., secured presence of PWs.1 and 7 and recorded the statement of PW1, pursuant to which he registered a case in Crime No.115 of 2007 of Nandyal Taluk Police Station under Sections 324, 506, 307 IPC and Section 3(1)(x) of the Act. Further investigation in this case was taken up by PW12. The material on record would show that on 26.05.2007 at about 05.30 a.m., PW11, the then Civil Assistant Surgeon, District Hospital, Nandyal, examined PW7 and issued Ex.P6 the wound certificate. He also examined PW1 on the same day and issued Ex.P7. On receipt of a copy of the FIR from PW9, on 26.05.2007, PW12 took up investigation and proceeded to Government hospital, Kurnool, wherein he examined PWs.1, 2 to 6 and recorded their statements. Thereafter, he visited Munagala village and conducted a panchanama of the scene and also prepared a rough sketch of the scene of offence, which is placed on record as Ex.P9. He tried to apprehend the accused but he was found absconding. On 31.05.2007, he proceeded to Munugala village along with the SI and arrested the accused. On interrogation, he is said to have confessed about the commission of offence, in the presence of PW9 and one Bala Obulesu, pursuant to which, MOs.1 and 2 were recovered under Ex.P3. After completing the investigation he filed a charge sheet, which

was taken on file as PRC No. 58 of 2008, on the file of Judicial Magistrate of First Class, Nandyal.

(iii) On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C., the same came to be numbered as SC.ST.SC.No.7 of 2010 on the file of Special Judge for Trial of Cases under SC & ST (POA) Act-cum-VI Additional District and Sessions Judge, Kurnool.

(iv) On the basis of the material on record, charges as mentioned above came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P9 and MOs.1 and 2.

(vi) After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was produced on behalf of the defence.

(vii) Relying upon the evidence of PWs. 1, 4 and 7, the learned Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life for the offence punishable under Section 3(2)(v) of SC ST (POA) Act and for six months under

Section 324 IPC. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there is abnormal delay of 12 hours in giving the report and thereafter it took nearly three days for the report to reach the Court. In the absence of any explanation for the delay, he would submit that a false case has been foisted to implicate the accused in grave offence. He took us through the evidence of PWs.4 and 7 and also evidence of the doctor to show that there was no explanation for delay in giving the report and that the criminal prosecution came to be initiated only with false allegations. In any event, he would contend that Section 3(2)(v) of the Act is not attracted as there was no intention to cause injuries on the ground that the injured belong to SC/ST.

4. On the other hand, learned public prosecutor opposed the same contending that the evidence of the two injured witnesses coupled with the evidence of PW4, who was examined as eyewitness is sufficient to base a conviction and that the findings of the trial Court warrants no interference.

5. The point that arises for consideration is whether the accused is liable for the offences punishable under Section 3(2)(v) of the Act and Section 324 IPC?

6. It is an admitted fact that the incident took place at 05.00 a.m. on 26.05.2007, on the terrace of the house belonging to

PWs.1 and 7. It is also not in dispute that on that day, PWs.1,4 and 7 along with other family members were sleeping on the terrace of the accused. The evidence on record, more particularly, the evidence of PWs.4 and 5 would show that there were differences between the accused and their family and there used to be quarrels between both of them on the ground that prosecution party was not showing respect to the accused and others, especially by not standing, whenever they pass by the side of the house. The evidence of PW4 would show that the accused not only used to abuse them by caste at times, but also threatened them with dire consequences. The fact that the prosecution witnesses belong to SC stands established in view of the evidence of PW8, who was working as Additional Project Director, DRDA, IKP, Kurnool. His evidence establishes that PW1 and the family members belong to Scheduled Caste. Ex.P2 is the certificate issued by him. The evidence of PW8 coupled with the evidence of PW1 establishes that PWs.1,4 and 7 are members of Scheduled Caste. Coming to the incident proper, it would be useful to refer to the evidence of PW1, which is as under:

“On 25.05.2007, myself, my brothers and my junior paternal uncle all we slept on the terrace of our houses in the night. But on the next day early morning at about 05.00 a.m. on hearing cries of my elder brother Nageswara Rao, when I woke up and found when the accused was hacking my brother with hunting sickle on his rights inside neck on the terrace of our house. When I woke up and went in rescue of our brother, he also hacked me with same sickle on my right side shoulder. And when I tried to escape he again beat me over my right hand below

the shoulder with sickle. On hearing our cries, my younger brother and uncle and both they also woke up. After my younger brother and my junior paternal uncle woke up and interfered, the accused left from the terrace while abusing all of us “*Madiga lanajakokukullara maa mundu manchaluvasukuni kurchuntaralevara*”

The accused by jumping from terrace, fled away.”

7. Though PW1 was cross examined at length, nothing useful came to be elicited to disregard his evidence. But, however, the accused was able to elicit that in respect of the earlier incidents where the accused is said to have abused them by touching their caste, no report was given to the police. It was also elicited that there were disputes between both the families. The evidence of PW1 gets corroboration from the evidence of PWs.4 and 7 also. PW7 who is also injured eyewitness, in his evidence, deposed that on that day, while PWs.1 and 7 were sleeping on the terrace, he heard some noise, woke up and found the accused on the terrace armed with a sickle. The accused immediately came upon him and when he tried to stand, the accused is said to have attacked him by giving a blow with sickle over his right side neck. When the accused tried to give another blow, PW1 interfered due to which he received a blow on the back of his right shoulder, causing injury. He also spoke about the accused abusing them by touching their caste. But in the cross examination, PW7 admits that though the accused abused him and his family members in the name of caste, no report has been given to the police about the same. Similar is the version of PW4.

8. From the evidence of these witnesses, it is clear that the accused is said to have gone to the terrace of the house of PWs.1 and 7, armed with sickle and then attacked PWs.1 and 7 and when PWs.2, 3 and 4 woke up, the accused is alleged to have abused them by touching their caste and then jumped from the terrace. Therefore, the evidence on record amply establishes that the incident took place on 26.05.2007 at 05.00 a.m., on which date the accused caused injuries to PWs.1 and 7. The said incident was witnessed by PWs.4 and others who were sleeping on the terrace.

9. Though learned counsel for the appellant tried to contend that the entire incident itself is suspicious due to delay in lodging the report and the report reaching the Court, but in our view, the same cannot be accepted for the reason that immediately after receiving information, PW12 the SI of Police proceeded to the Kurnool and recorded the statements of PW1, basing on which he registered a crime. Since there was no death and the case was only under Section 307 IPC, there was some delay in lodging the FIR. That by itself will not throw out the entire prosecution case as false when there are injured eyewitnesses, whose presence at the scene stands established in view of the injuries sustained by them which gets corroboration from the medical certificate issued by PW11.

10. As stated earlier, the question is whether an offence under Section 3(2)(v) of the Act is made out?

Section 3(2)(v) of the Act reads as under:

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

A reading of the said provision makes it clear that in order to constitute the offence, one should have committed an offence under the Indian Penal Code which is punishable with an imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member.

11. It is to be noted that PW11, the Civil Assistant Surgeon, who examined PWs.7 and 1, issued Ex.P6 and P7 wound certificates. Ex.P6 refers to three injuries on the body of PW7, which are as under:

“1. An incised injury extending from just below right ear from angle of mandible and chin to the back of right ear, 20 cmx8cm bone deep, bleeding, fracture present on the underlying bone.

2. An incised wound just below injury No.1 from chin to the back side of neck bleeding present size 20x2 cms. Pulsations present.

3. Loss of tooth present.”

12. Though the wound certificate refers to three injuries on the body, PW7 in his evidence deposed that he was attacked only

once near the right side of the neck with sickle. No explanation is forthcoming from the prosecution as to how PW7 sustained other two injuries. It is not his case that there was a scuffle and pursuant thereto, he lost his teeth or that he received second injury prior to the first injury.

13. PW11 also examined PW1 and issued Ex.P7 wound certificate, wherein he noticed three injuries. All of them were found to be simple in nature. Even PW1 in his evidence never spoke about the accused attacking him thrice. But in his evidence, he deposed that the accused hacked him with sickle on the right side shoulder, which is found to be simple in nature.

14. Keeping the above injuries in the background, it is to be seen whether the offence under Section 307 IPC is made out?

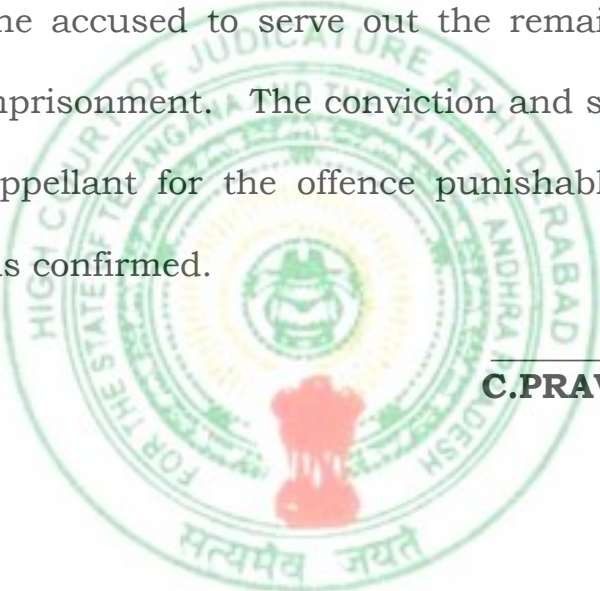
15. Though the prosecution witnesses tried to project their case by stating that the accused went there with an intention to kill the injured, but the over all reading of the case does not anywhere indicate the intention of the accused was to cause death of PWs.1 and 7. If really intention was to cause death, definitely they would not have left both the witnesses after giving a single blow when all of them were unarmed and unprepared. Therefore at the time of incident, the intention of the accused appears to be to cause injuries to the members of prosecution due to earlier disputes. We also intend to refer to the evidence of the investigating officer, with regard to the recovery made pursuant to the confession of the accused.

16. PW12 in this evidence states that on 31.05.2007, on receiving credible information, he proceeded to Munagala village and arrested the accused. Pursuant to the confession made, he is said to have recovered two weapons said to have been used by the accused in the commission of offence. They are MOs.1 and 2 (sickle and knife). But, it is neither the case of the prosecution nor is the version of any of the eyewitnesses that knife was also used in the commission of offence. These two weapons alleged to have been seized were never sent to expert to find out as to which of the weapon was used for commission of offence, though there are cut injuries on the body. Hence, a doubt arises as to whether really these weapons were used by the accused for commission of the offence, moreso when no explanation is given as to why two weapons were seized.

17. In view of the above findings, we feel that the nature of offence can be altered from Section 3 (2)(v) of the Act to Section 326 IPC and the sentence of imprisonment for life is reduced to seven (07) years. However, the conviction under Section 324 IPC for causing injuries to PW1 stands confirmed.

18. Accordingly, the appeal is allowed in part. The conviction and sentence recorded against the appellant/accused by name Boya Chinhamani Rama Mohan, in the judgment dated 04.11.2011, in SC.ST.Sessions Case No.7 of 2010, on the file of the Special Judge for Trial of Cases under SC.ST(POA)Act-cum-VI Additional District and Sessions Judge, Kurnool, for the offence

punishable under Section 3(2)(v) of the Act are altered to one under Section 326 IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years. This Court, vide its order dated 28.11.2016 in CrI.A.M.P.No.1890 of 2016, directed release of appellant/accused on bail on the terms and conditions mentioned therein. In view of the said alteration of sentence awarded by the trial Court, the bail bonds of the appellant/accused shall stand cancelled and the Magistrate concerned shall take immediate steps to secure the presence of the accused to serve out the remaining part of the sentence of imprisonment. The conviction and sentence awarded against the appellant for the offence punishable under Section 324 IPC stands confirmed.



C.PRAVEEN KUMAR, J

T.RAJANI, J

26.06.2018
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